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Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SUSAN S. WOODS

Appeal No. 2001-1904
Application No. 09/240,450

HEARD: August 15, 2002

Before KIMLIN, KRATZ, and PAWLIKOWSKI, Administrative Patent
Judges.

PAWLIKOWSKI, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's refusal to allow claims 1 and 3-22. Claim 2 has been canceled. Claim 22 is allowable.

The subject matter on appeal is represented by claims 1, 10, and 16, set forth below:

1. A melt processable polymer composition comprising a major amount of a melt processable thermoplastic hydrocarbon polymer and a minor amount of a processing additive composition comprising

(a) a fluorothermoplastic polymer containing units derived from a monomer charge of

(i) vinylidene fluoride and,

(ii) at least two separate ethylenically unsaturated copolymerizable fluorinated comonomers, and

(iii) optionally at least one low molecular weight non-fluorinated alpha olefin monomer provided that when the low molecular weight non-fluorinated alpha olefin monomer is present, the vinylidene fluoride comprises at least 15 weight percent of the monomer charge used to prepare the fluorothermoplastic polymer, and

(b) a poly(oxyalkylene) polymer wherein the weight ratio of said fluorothermoplastic polymer to said poly(oxyalkylene) polymer is from 1:1 to about 1:0.005.

10. A method for reducing melt defects in melt processable thermoplastic hydrocarbon polymer compositions which comprises admixing a melt processable thermoplastic hydrocarbon polymer with an effective amount of a polymer processing additive composition comprising

(a) a fluorothermoplastic polymer containing units derived from (i) vinylidene fluoride, and (ii) at least two separate ethylenically unsaturated copolymerizable fluorinated comonomers, and (iii) optionally at least one low molecular weight non-fluorinated alpha olefin monomer, and

(b) a poly(oxyalkylene) polymer wherein the weight ratio is the fluorothermoplastic polymer to the poly(oxyalkylene) polymer is at least 1:1, mixing the polymer processing additive composition and the hydrocarbon polymer for a time sufficient to blend them together, and melt processing said admixture.

16. A processing additive composition comprising

(a) a fluorothermoplastic polymer containing units derived from (i) vinylidene fluoride and, (ii) at least two separate ethylenically unsaturated copolymerizable fluorinated comonomers, and (iii) optionally at least one low molecular weight non-fluorinated alpha olefin monomer, and

(b) a poly(oxyalkylene) polymer wherein the weight ratio of said fluorothermoplastic polymer to said poly(oxyalkylene) polymer is in the range of from about 1:1 to 1:0.25.

The examiner relies upon the following references as evidence of unpatentability:

Priester	5,587,429	Dec. 24, 1996
Blong et al. (Blong)	5,710,217	Jan. 20, 1998

Claims 1, 8-14, 16, 21, and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Blong.

Claims 1 and 3-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Priester.

We note that on page 4 of the answer, the examiner has indicated that the 35 U.S.C. § 112, first paragraph, rejection have been withdrawn.

OPINION

For the reasons set forth in the answer, and below, we affirm each of the rejections noted above.

I. The Rejection involving the Reference of Blong

On page 12 of the brief, appellant argues that "Blong excludes any level of vinylidene fluoride above 15 weight percent(wt%)".

On page 4 of the answer, the examiner states that Blong teaches from 0 to 15 weight percent of monomers, such as a vinylidene fluoride, can be used in the fluoropolymer.

Upon our review of Blong, we find that Blong teaches an amount of from 0 to 15 weight percent of vinylidene fluoride. See, for example, column 3, lines 10-13.

Hence, we agree with the examiner's interpretation of Blong. Because Blong does teach an amount of up to 15 weight percent, and because appellant's claim recites "the vinylidene fluoride comprises at least 15 weight percent", Blong overlap's the amount claimed in appellant's claim 1. We note that a claimed invention is rendered prima facie obvious by the teachings of a prior art reference that discloses a range that touches the range recited in the claim. In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974). See also, In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997); In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). Hence, we determine that the value disclosed in Blong renders obvious appellant's recited range.

Furthermore, as pointed out by the examiner, independent claims 10 and 16 do not require a particular amount of vinylidene fluoride, and hence Blong also meets the limitations of these claims.¹ Based upon the fact that the claims stand or fall with claim 10, appellant's arguments regarding claim 1 have no import. See footnote 1. However, we have addressed the arguments raised by appellants because appellants arguments focus on claim 1 only.

In view of the above, we affirm the rejection of claims 1, 8-14, 16, 21, and 22.

¹ We note that on page 9 of the brief, appellant states that claims 1 and 3-22 stand or fall together. Hence, we only need to consider claim 10, the broadest claim on appeal. 37 CFR § 1.192(c) (7) (8) (2000).

II. The Rejection involving the Reference of Priester

On pages 12-13 of the brief, appellant argues that Priester teaches a ratio of poly(oxyalkylene) polymer to fluoropolymer from about 6:1 to about 1:4, preferably in the range of about 3:1 to about 1:12. See column 5, lines 65-68 and column 6, line 1 of Priester.

Appellant argues that the inverted value recited in claim 1 regarding component (b), corresponding to the ratios of Priester, is from 1:1 to about 1:200. Appellant concludes that the present application extends "50X beyond the range contemplated by Priester", and appellant argues that this is "beyond the realm of obviousness".

The examiner, on page 5 of the answer, rebuts and states that there is an overlap between the ratio required in the claims and the ratio taught by Priester, and we agree for the reasons mentioned, supra. Id.

Appellant further argues that Priester requires a polar-side-group-containing extrusion adjuvant in addition to the fluoropolymer and poly(oxyalkylene) polymer. (brief, page 12). However, as pointed out by the examiner on page 5 of the answer, appellant's claims do not exclude a polar-side-group-containing extrusion adjuvant.

In view of the above, we affirm this rejection also.

III. Conclusion

Each of the rejections is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.136(a).

AFFIRMED

Edward C. Kimlin)	
Administrative Patent Judge)	
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)	
Peter F. Kratz)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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